



<http://www.dfg.ca.gov>

Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005

RECEIVED
SACRAMENTO
CYR WOCB

08 JAN 15 AM 10:53



January 11, 2007

Rudy Schnagl
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670

Subject: Simon Vander Woude and Vander Woude Farms
DBA Vander Woude Dairy
Tentative Individual
Waste Discharge Requirements (WDRs)
Order No. R5-2008-XXXX

Dear Mr. Schnagl:

The Department of Fish and Game has reviewed the Tentative Individual WDRs for the existing Simon Vander Woude Dairy planned herd expansion in Merced County referenced above. The expansion would allow for an increase in herd size from 1,410 Holstein dry and milk cows to 3,680 dry and milk cows; and an increase in support stock from 120 one- to two-year heifers and no calves to 1,640 one- to two-year heifers and 1,660 calves. The dairy is located north of Rahilly Road and west of State Route 59, in Sections 13, 23, and 24, Township 8 South, Range 13 East (MDB&M). While the Department unfortunately was unable to submit comments during the requested comment period that ended on December 31, 2007, we are submitting these comments on the Tentative WDRs, specific to compliance with the California Endangered Species Act (CESA) and Section 1600 (Streambed Alteration) of the Fish and Game Code, and appreciate any consideration that can be given the following recommendations during the scheduled January 24/25, 2008, hearing before the Regional Water Board.

There are special status resources present in the Project area, and the Department has concerns about the Project-related impacts to the surface waters (Duck Slough and Owens Creek), ground water, riparian, wetland, and upland habitat, adjacent to and within the Project site, as well as the associated impacts to species that utilize these habitat types. Moreover, intact vernal pools, a rare and declining habitat type in California that has a high likelihood of supporting State- and Federally listed plant and animal species, are located both within the northwestern portion of Project site, and directly along the west and southwest boundaries of the proposed Project site.

Prior to any development associated with the expansion, such as an increase in cropland into the northwestern portion of the Project site, in order to adequately assess any potential Project-related impacts to biological resources, additional reconnaissance-level biological surveys may be necessary and should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether or not any special status species may be present within the Project area. The first preliminary site reconnaissance was conducted on January 13, 2000, by Vollmar Consulting and consisted of a one-day survey of

the site. The focus of the site visit was to determine whether special status plant and animal species or their habitat existed in this location. At that time, wetlands within the leveled croplands of Field 1 and 2 were identified, riparian vegetation along Owens Creek and Duck Slough, as well as native grassland and scattered vernal pools in the above mentioned northwestern portion of the site.

Our further specific comments pertaining to the Project follow.

Department Jurisdiction

Trustee Agency Authority: The Department is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

California Endangered Species Act (CESA): The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, the Department may need to issue an Incidental Take Permit for any or all of the Projects. It is important to note that the issuance of WDRs by the Regional Water Board does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080. In other words, compliance with CESA does not automatically occur based on local agency project approvals, the issuance of permits under the authority of other agencies, or CEQA completion. Additional consultation with the Department may be warranted to ensure that Project implementation does not result in unauthorized "take" of a State-listed species.

The Project has the potential to reduce the number or restrict the range of several endangered, rare, or threatened species. Federal- and/or State-listed species known to occur in the Project area vicinity include:

Species

Listing

Colusa grass
Neostapfia colusana

Federally listed - Threatened
State-listed - Endangered

California tiger salamander
Ambystoma californiense

Federally listed - Threatened

Vernal pool tadpole shrimp
Lepidurus packardii

Federally listed - Endangered

Species

Listing

Vernal pool fairy shrimp
Branchinecta lynchi

Federally listed - Threatened

Swainson's Hawk
Buteo swainsoni

State-listed - Threatened

The following special status species may also be present in the project vicinity: heartscale (*Atriplex cordulata*), vernal pool small scale (*Atriplex persistens*), subtle orache (*Atriplex subtilis*), western spadefoot toad (*Spea hammondi*), western pond turtle (*Emys marmorata*), and American badger (*Taxidea taxus*).

Biological survey results should be submitted to Department and to the United States Fish and Wildlife Service (USFWS), which regulates activities that may result in "take" of species listed under the Federal Endangered Species Act.

Stream Alteration Notification and Responsible Agency Authority: The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code Section 1600 et seq. If activities are proposed that will involve work within the bed, bank or channel of the previously mentioned stream courses, a Stream Alteration Agreement (SAA) may be necessary. The Project proponent should submit a Stream Alteration Notification to the Department for the Project. The Department is required to comply with CEQA in the issuance or the renewal of an SAA. For additional information on notification requirements, please contact our staff in the Stream Alteration Program at (559) 243-4593.

Riparian Habitat and Wetlands: Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. Vernal pools and other obligate wetlands were identified at the Project site during the January 2000 site visit and wetlands are adjacent to the Project site as well. Further, the Project site is located in an area with historically very shallow first encountered ground water (approximately 1 foot below ground surface; see Department of Water Resources ground water level data, 08S13E12R001M). The United States Army Corps of Engineers (ACOE) describes the dominant hydrodynamics and geomorphic controls of California vernal pools and wetlands as vertical from either ground water or precipitation into depressions. These controls are responsible for maintaining many of the functional aspects of wetland ecosystems, including the chemical characteristics of waters, habitat maintenance, and water storage and transport (Brinson, M. M. *A Hydrogeomorphic Classification for Wetlands*. 1993). There is the potential to degrade this very shallow ground water with salts, nitrates, and other constituents of concern (pesticides, herbicides, etc.) from the application of dairy wastewater to cropland, as well as from the dairy facility site (corrals and wastewater storage lagoons). The Department has concerns that the sensitive vernal pool and wetland habitat within and adjoining the proposed Project site and the species that utilize it are susceptible to potential impacts from the discharge of these constituents.

Also, based on the information contained in the WDR's, it is unclear if there will be an expansion of the cropland for the facility into the northwestern portion of the site where vernal pools and wetlands have been previously identified. The Department has a no-net-loss policy regarding impacts to wetlands. When wetland habitat cannot be avoided or the functional value of the wetland may be impacted through the alteration of the surrounding topography or fundamental hydrology, these impacts to wetlands should be compensated for with the creation of new habitat, preferably on-site, on a minimum of an acre-for-acre basis.

Moreover, a formal wetland delineation may need to be conducted of the Project site by a qualified biologist to determine the location and extent of wetland habitat on-site, including vernal pools and swales, if expansion is planned into the above identified areas of the site. The wetland delineation should be submitted to the ACOE for verification. Wetlands should be designated on a site map and included in the final environmental documents.

In addition, the Department recommends delineating all surface waters and wetlands with the following minimum no-disturbance buffers. Depending upon what Project-related activities are proposed in these areas, larger buffers may be warranted to avoid impacts.

- A 250-foot no-disturbance buffer delineated from the high water mark of ponds, vernal pools, and swales.
- The riparian vegetation along waterways should be protected with a 200-foot no-disturbance buffer delineated from the high water mark of each surface water body.
- A 100-foot no-disturbance buffer around the high water mark of each surface water channel that has no riparian vegetation.

Listed Plant Species: Because the timing of the January 2000 site survey was outside of the blooming period for all of the potentially present threatened and endangered plant species associated with vernal pool and wetland habitat identified on the Project site, additional surveys for rare, threatened, and endangered plants and natural communities would need to be conducted in those areas prior to any ground-disturbing activities. Focused, repeated surveys need to be conducted multiple times during the appropriate floristic period(s) in order to adequately assess the potential Project-related impacts to listed plant species. If State-listed plants are detected during surveys, consultation with the Department is warranted to discuss the potential for "take" under CESA.

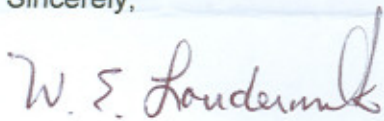
Thank you for the opportunity to provide comments after the formal comment period has ended. If you have any questions, or need any clarification, please call Annee Ferranti, Staff Environmental Scientist, at (559) 243-4014, extension 227. In the future, you can notice the Department regarding Discharger specific and other Orders by sending it to the following address:

Rudy Schnagl
January 11, 2008
Page 5

California Department of Fish and Game
Central Region
Attention: Julie Vance
1234 East Shaw Avenue
Fresno, California 93710

Depending upon the results of the previously mentioned biological surveys, we may have additional comments and recommendations regarding avoidance, minimization, and mitigation of Project impacts to habitat and special status species.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. E. Loudermilk". The signature is fluid and cursive, with a large, stylized "L" at the end.

W. E. Loudermilk
Regional Manager

cc: Susan Jones
United States Fish and
Wildlife Service
2800 Cottage Way, W-2605
Sacramento, California 95825

Kathy Norton
San Joaquin Valley Office
United States Corps of Engineers
1325 J Street
Sacramento, California 95814-2922